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AS No.240 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AS No.240 of 2022

1.Balaji
2.Latha
3.Kandappa
4.Dinakaran
5.Jayanthi
6.Jansirani @ Devi

.. Appellants

VS.

1.Arumugam
2.Anandan @ Ananda Kumar
3.Ganesan
4.Gopi
5.Giridaran
6.Gejaraju
7.Vasudevan
8.Gayathri
9.Radhika
10.Pawan Kumar

.. Respondents



AS No.240 of 2022

PRAYER : This Appeal Suit is filed under Order XLI, Rule 1 of CPC under Section 96 of the Code of Civil Procedure against the order and decree passed by the learned II Additional District Judge, Vellore @ Ranipet in IA No.4 of 2020 in OS No.95 of 2019 dated 24.03.2022.

For Appellants : Mr.Y.Kaja Navas

For Respondents-1 to 4 : Mr.T.P.Prabakaran

For Respondents-5 to 10 : Given up.

J U D G M E N T

The present Appeal Suit has been filed against the order and decree passed by the learned II Additional District Judge, Vellore @ Ranipet in IA No.4 of 2020 in OS No.95 of 2019 dated 24.03.2022.

2. The appellants are plaintiffs and the respondents are defendants in the suit. The suit was instituted for declaration and permanent injunction and for recovery of possession.



AS No.240 of 2022

3. It is not in dispute that the defendants in the suit filed written statement and thereafter an Interlocutory Application was filed in IA No.4 of 2020 for rejection of plaint under Order VII, Rule 11 of the Code of Civil Procedure.

4. The Trial Court adjudicated the issues and allowed the application and the plaint was rejected. Thus, the appellants have chosen to prefer the present appeal Suit.

5. The learned counsel for the appellants-plaintiffs mainly contended that the appellants herein earlier filed suit for partition, which was dismissed and the order of the Trial Court was confirmed in the appeal suit.

6. There is an observation in the judgment of the Trial Court as well as in the First Appellate Court order that the title of the plaintiffs is denied by the defendants and they are in possession. In such a situation, the



AS No.240 of 2022

plaintiffs ought to have filed suit for title and recovery of possession from the third defendant therein and not for partition.

7. The Trial Court formed an opinion that the title of the third defendant therein cannot be decided in the suit and the question to be determined is the entitlement of the plaintiffs' share in the suit schedule property. However, the plaintiffs are out of possession and therefore, the relief of partition cannot be granted.

8. In view of the said observation, the appellants herein have chosen to file fresh suit in OS No.95 of 2019 for declaration, permanent injunction and for recovery of possession. Thus the earlier suit is not a bar for institution of fresh suit. Since the appellants are claiming title in respect of the suit schedule property and in respect of the plaint averments, the respondents-defendants filed detailed written statement denying the averments.



9. While-so, the Trial Court ought to have tried the suit on merits and in accordance with law. However, the Trial Court merely on the ground that there is a delay in institution of the suit rejected the plaint on the ground of limitation. More-so, the Trial Court relied on the earlier suit for partition filed by the appellants herein.

10. In respect of the findings in this regard, the limitation in the present case is to be adjudicated with reference to the facts as well as the events. It is a mixed question of facts and law and therefore, an adjudication becomes imminent. Whenever there is a mixed question of fact and law, it is preferable to try the suit by framing the issues rather than rejecting the plaint under Order VII, Rule 11 of the Code of Civil Procedure.

11. All suits are to be tried on merits. An opportunity of adjudication need not be denied to anyone of the parties, merely based on certain technical grounds. No doubt, the limitation point can be raised as a preliminary issue. However, in the present case, the appellants have earlier



AS No.240 of 2022

instituted suit for partition and the present Appeal Suit is in continuation of the earlier suit. Therefore, the mixed question of fact and law are to be decided for appreciation of the issues raised between the parties.

12. Regarding dismissal of the earlier suit, it was a suit for partition wherein the Court made a finding that there is title dispute between the parties which necessitated the appellants to file fresh suit for declaration and recovery of possession.

13. All the complex facts and circumstances are to be adjudicated with reference to the documents and evidences and the Trial Court ought not to have arrived a conclusion that the plaint is to be rejected on these grounds.

14. The power under Order VII Rule 11 of CPC is to be exercised sparingly by the Courts. All the suits are to be adjudicated on merits and in accordance with the law. Lenient view is certainly not desirable when the



AS No.240 of 2022

plaint and cause of action reveals certain facts and therefore, the Courts are expected to be doubly cautious while exercising the power under Order VII Rule 11 of CPC. There may be vexatious suits which all are instituted by the litigants. May that as it be. Even in such cases, if there are certain doubtful facts or otherwise, then conducting a trial would be more preferable than rejecting the plaint. Order VII Rule 11 of CPC enumerates rejection of plaint on certain circumstances as contemplated under sub-clauses (a) to (f) in Rule 11.

15. Order VII Rule 13 of CPC denotes: “The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.”

16. Holistic reading of Order VII Rule 11 and Rule 13 of CPC would reveal that Order VII Rule 11 is intended to reject the plaint more on technical grounds rather on merits. Thus, even in case, a plaint is rejected



AS No.240 of 2022

under Order VII Rule 11 by the Courts, then the plaintiff is entitled to institute a fresh suit by correcting the cause of action or the mistakes or otherwise, by invoking Order VII Rule 13 of the Code of Civil Procedure. Thus, rejection of plaint is not a total bar of institution of a fresh suit by the plaintiff which can be instituted after setting out the correct cause of action or by rectifying the errors or mistakes if any found, which was the basis for rejection of the plaint.

17. Careful reading of Order VII Rule 11 would reveal that the Courts are empowered to reject the plaint on certain specific circumstances. The language employed in Order VII Rule 11 Sub-clause (a) is that “where it does not disclose a cause of action”, it does not state that “where there is no cause of action”. There is a difference between “no cause of action” and “it does not disclose a cause of action”. In the second phrase, there is a cause of action but it was not disclosed in the plaint. That exactly is the reason to reject the plaint. If so, the plaintiff would naturally be entitled to set out the cause of action in a correct manner and institute a fresh suit as



AS No.240 of 2022

per Order VII Rule 13 of CPC. In this regard, Order VII as a whole must be considered by the Courts.

18. Order VII Rule 7 denotes relief to be specifically stated in the plaint. Accordingly, every plaint shall specifically state the relief which plaintiff claims, either simply or alternatively, and it shall not be necessary to ask for general or other relief which may always be given at the Court, just to the same extent as if it had been asked for, and the same rule shall apply to any relief claimed by the defendant in his written statement. Rule 9 speaks about “procedure on admitting the plaint”, Rule 10 stipulates “return of plaint”. Thus, Rule 11 contemplates “rejection of plaint”. Once the plaint is not in compliance with the other rules contemplated under Order VII, then such claims are to be rejected under Rule 11 of CPC. If it is rejected on the ground stipulated under Rule 11, then the plaintiff is entitled to institute a fresh suit, setting out the corrections or cause of action as the case may be and proceed with the suit. No other ground on which the plaint can be rejected, other than those mentioned under Rule 11 can be saved under Rule



13, except when the suit was instituted afresh, correcting the cause of action or mistakes or otherwise.

19. Holistic reading of the Order VII would clarify that no plaint is to be rejected on merits. The Trial Court cannot adjudicate the merits in an Interlocutory Application filed under Order VII Rule 11 of the Code of Civil Procedure. Even if the cause of action is improperly set out, the plaint as a whole must be read and merely on the basis of the facts in one paragraph or in the cause of action paragraph, plaint need not be rejected under Order VII Rule 11 of the Code of Civil Procedure.

20. This exactly is the reason why this Court has to emphasise that the power under Order VII Rule 11 has to be exercised sparingly and even if the plaint is rejected on the ground stipulated under Rule 11, then the plaintiff is entitled to institute a fresh suit by setting out the correct cause of action or correcting the mistakes on which the plaint was rejected, or otherwise. The intention of the Court is not to deprive a person to get



AS No.240 of 2022

relief on the adjudication of the facts on merits. The spirit of the code in this aspect is to be borne in mind by the Courts while dealing with the Interlocutory Applications filed under Order VII Rule 11 of CPC.

21. In view of the facts and circumstances and considering the fact that the issues raised between the parties are to be adjudicated on merits and in accordance with law, since the mixed question of fact and law are raised, this Court is inclined to consider the present Appeal Suit.

22. Accordingly, the fair and decretal order dated 24.03.2022 passed by the learned II Additional District Judge, Vellore @ Ranipet in IA No.4 of 2020 in OS No.95 of 2019 is set aside and the present Appeal Suit No.240 of 2022 stands allowed. However, there shall be no order as to costs.

10-02-2023

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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WEB COPY



AS No.240 of 2022

S.M.SUBRAMANIAM, J.

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To

The II Additional District Judge,
Vellore @ Ranipet.

AS No.240 of 2017

10-02-2023

12/12